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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of Local Competition) CC Docket No. 96-98
Provisions in the Telecommunications)
Act of 1996)

**SUPPLEMENTAL COMMENTS OF
VANGUARD CELLULAR SYSTEMS, INC.**

Vanguard Cellular Systems, Inc. ("Vanguard"), by its attorneys, hereby files supplemental comments in response the Public Notice issued in the above-referenced docket on June 20, 1996.^{1/} These comments address the manner in which the Commission introduced the "Industry Demand & Supply Simulation Model" into the local competition rulemaking record, and the extent to which interested parties can provide meaningful comment on its substance and use.

I. INTRODUCTION

On June 20, 1996, the Commission solicited comment on an economic model of the telecommunications industry formulated by the Industry Analysis Division of the Common Carrier Bureau and the Competition Division of the Office of the General Counsel. The Industry Demand & Supply Simulation Model was designed to simulate the relative impact of

^{1/} See *Public Notice*, "Supplemental Comment Period Designated For Local Competition Proceeding, CC Docket No. 96-98," DA 96-1007, IAD 96-175 (released June 20, 1996) ("*Public Notice*"); see also *Public Notice*, "Supplemental Comment Period Extended For Local Competition Proceeding, CC Docket No. 96-98," DA 96-1030, IAD 96-176 (released June 25, 1996).

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particular changes in the telecommunications industry by permitting the user to "specify varying growth rates, pricing trends, demand elasticities and cost relationships."^{2/} As indicated in the Public Notice, the model purportedly permits users to designate nearly 200 specifications to predict and quantify the effect of specific demand, cost and policy changes on traditional industry segments.

Economic models such as this one can be useful in predicting the impact of Commission policies and economic assumptions and developments on the telecommunications industry. In fact, Vanguard applauds the Commission's efforts to develop a model to improve the rulemaking process and to identify the effects of proposed rules and policies. The value of a model in policymaking depends, however, on the extent to which the model is explained adequately to the public and can be utilized effectively by all segments of the telecommunications industry. That has not occurred in this case. Accordingly, while the Commission may be able to use the model in other contexts in the future, it cannot rely on the model to resolve issues raised in the local competition rulemaking proceeding.

II. THE INFORMATION PROVIDED BY THE COMMISSION IS INSUFFICIENT TO PERMIT EFFECTIVE COMMENT.

Vanguard's concerns regarding the FCC's telecommunications model, and its proposed use as an analytical tool in the on-going local competition proceeding, are related primarily to the lack of information that accompanied its introduction into the record. Specifically, a review of the model and the accompanying Public Notice provides little, if any, information about the model's theoretical foundation, or how it is to be used. Indeed,

^{2/} See *Public Notice* at 1.

interested parties do not have a meaningful opportunity to comment on the model because no information was given describing the model's underlying assumptions or its potential use in resolving interconnection pricing issues raised in the local competition proceeding.

The complexity of the model and the extent to which inputs can be varied to achieve meaningful results requires a more detailed discussion of the model than has been offered by the Commission to date. For instance, the proposed model occupies several levels of a Lotus 1-2-3 spreadsheet file, including specifications; snapshot results; detailed results (consumer/producer welfare analysis); calculation of interstate access charge; revenue and expense buildups; input productivity; residential demand simulation; business demand simulation; and macros. Neither the model nor the Public Notice seeking comment on the model, however, describes how the information can be used or will be put to use, how the figures included in the model were derived or how the model will be used to address the pricing of interconnection, transport, termination and unbundled elements. There is no information on ranges of variables, the units in which the variables should be entered or what individual inputs mean.^{3/} Significantly, there does not appear to be a place to consider varying interconnection charges or to reflect changes in termination or transport variables.

The assumptions made by the FCC in crafting the model and the ways it will be used in resolving issues raised in the above-referenced proceeding must be made known to the public to provide an opportunity for meaningful comment. The Administrative Procedure Act provides that an agency must notify the public of proposed changes in its rules by: (1)

^{3/} For example, is it unclear how the access charge inputs in lines 13 through 18 should be determined.

disclosing "either the terms or substance of the proposed rule or a description of the subjects and issues involved;" and (2) giving "interested parties an opportunity to participate in the rule making through the submission of written data, views or arguments" ^{4/} The courts have interpreted this obligation to mean that notice must be sufficient to alert interested parties to the proposals under agency consideration ^{5/} Compliance with this threshold ensures that the notice and comment rulemaking is not transformed into a "guessing game" in which the inclusion of one subject indicates that a "distant cousin" of that subject might be addressed. ^{6/}

In placing the Industry Demand & Supply Simulation Model on public notice, the Commission encourages interested parties to "use the model, create variations of the model, or file models of their own" ^{7/} No information, however, is provided to support any meaningful analysis; parties are left to speculate as to how the model can and will be used to support future FCC determinations. In particular, the Public Notice provides no direction on how inputs can be varied to determine the impact on the industry of varying interconnection, transport, termination, or unbundled element pricing schemes — critical issues in the local

^{4/} See 5 U.S.C. §553(b)(3) and (c) (1988).

^{5/} See *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 549 (D.C. Cir. 1983) ("Agency notice must describe the range of alternatives being considered with reasonable specificity. Otherwise, interested parties will not know what to comment on, and notice will not lead to better-informed agency decision-making."); see also *HBO v. FCC*, 567 F.2d 9, 35 (D.C. Cir. 1977) ("an agency proposing informal rulemaking has the obligation to make its views known to the public in a concrete and focused form so as to make criticism or formulation of alternatives possible.").

^{6/} See *Fertilizer Institute v. EPA*, 935 F.2d 1303, 1311 (D.C. Cir. 1991).

^{7/} See *Public Notice* at 1.

competition proceeding. Without such information, the public cannot provide relevant and useful comment in aid of rational and reasonable FCC decision-making. Consequently, the Commission cannot rely on the model as a basis for its pricing determinations in this proceeding.^{8/}

III. CONCLUSION

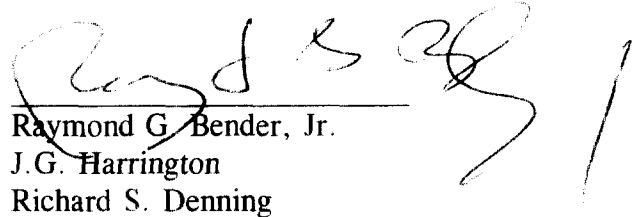
Although economic models are important to studying the effects of public policy on regulated industries, it is critical that the FCC's efforts to develop and utilize such a model include effective industry input. Accordingly, if the Commission intends to use this model in any proceeding, it must continue developing the model, with industry support, and provide greater opportunity for discussion and analysis. Given the lack of specificity in the Public Notice, the short period of time allotted for analyzing the model and proposing alternatives in this docket, and the looming statutory deadline, however, the Commission cannot rely on the

^{8/} Vanguard does note, however, that it appears that, given any reasonable set of assumptions, incumbent local exchange carriers will continue to be profitable throughout the study period covered by the Model. This result is consistent with the predictions of most neutral industry analysts.

model to make pricing determinations regarding competitive access to local exchange carrier bottleneck facilities in this proceeding.

Respectfully submitted,

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July 8, 1996

CERTIFICATE OF SERVICE

I, V. Lynne Lyttle, a secretary at Dow, Lohnes & Albertson, do hereby certify that on this 8th day of July, 1996, a copy of the foregoing "Supplemental Comments of Vanguard Cellular Systems, Inc." was hand delivered to the following:

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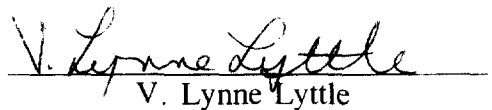
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